

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 142**  
97TH GENERAL ASSEMBLY

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Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, May 7, 2013, with recommendation that the Senate Committee Substitute do pass.

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TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 393.320 and 393.1075, RSMo, and to enact in lieu thereof two new sections relating to utilities, with a penalty provision.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 393.320 and 393.1075, RSMo, are repealed and two  
2 new sections enacted in lieu thereof, to be known as sections 393.320 and  
3 393.1075, to read as follows:

393.320. 1. As used in this section, the following terms mean:

2 (1) "Large water public utility", a public utility that regularly provides  
3 water service or sewer service to more than eight thousand customer connections  
4 and that provides safe and adequate service but shall not include a sewer district  
5 established under Section 30(a), Article VI of the Missouri Constitution, sewer  
6 districts established under the provisions of chapter 204, 249, or 250, public  
7 water supply districts established under the provisions of chapter 247, or  
8 municipalities that own water or sewer systems;

9 (2) "Small water utility", a public utility that regularly provides water  
10 service or sewer service to eight thousand or fewer customer connections; a water  
11 district established under the provisions of chapter 247 that regularly provides  
12 water or sewer service to eight thousand or fewer customer connections; a sewer  
13 district established under the provisions of chapter 204, 249, or 250 that regularly  
14 provides sewer service to eight thousand or fewer customer connections; or a  
15 water system or sewer system owned by a municipality that regularly provides  
16 water service or sewer service to eight thousand or fewer customer connections;  
17 and all other entities that regularly provide water service or sewer service to

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 eight thousand or fewer customer connections.

19           2. The procedures contained in this section may be chosen by a large  
20 water public utility, and if so chosen shall be used by the public service  
21 commission to establish the ratemaking rate base of a small water utility during  
22 an acquisition.

23           3. (1) An appraisal shall be performed by three appraisers. One  
24 appraiser shall be appointed by the small water utility, one appraiser shall be  
25 appointed by the large water public utility, and the third appraiser shall be  
26 appointed by the two appraisers so appointed. Each of the appraisers shall be a  
27 disinterested person who is a certified general appraiser under chapter 339.

28           (2) The appraisers shall:

29           (a) Jointly prepare an appraisal of the fair market value of the water  
30 system and/or sewer system. The determination of fair market value shall be in  
31 accordance with Missouri law and with the Uniform Standards of Professional  
32 Appraisal Practice; and

33           (b) Return their appraisal, in writing, to the small water utility and large  
34 water public utility in a reasonable and timely manner.

35           (3) If all three appraisers cannot agree as to the appraised value, the  
36 appraisal, when signed by two of the appraisers, constitutes a good and valid  
37 appraisal.

38           4. Nothing in this section shall prohibit a party from declining to proceed  
39 with an acquisition or be deemed as establishing the final purchase price of an  
40 acquisition.

41           5. (1) The lesser of the purchase price or the appraised value, together  
42 with the reasonable and prudent transaction, closing, and transition costs  
43 incurred by the large water public utility, shall constitute the ratemaking rate  
44 base for the small water utility as acquired by the acquiring large water public  
45 utility; provided, however, that if the small water utility is a public utility subject  
46 to chapter 386 and the small water utility completed a rate case prior to the  
47 acquisition, the public service commission may select as the ratemaking rate base  
48 for the small water utility as acquired by the acquiring large water public utility  
49 a ratemaking rate base in between:

50           (a) The lesser of the purchase price or the appraised value, together with  
51 the reasonable and prudent transaction, closing, and transition costs incurred by  
52 the large water public utility unless such transaction, closing, and transition  
53 costs are elsewhere recoverable in rates; and

54 (b) The ratemaking rate base of the small water utility as ordered by the  
55 public service commission in the small water utility's last previous rate case as  
56 adjusted by improvements and depreciation reserve since the previous rate case  
57 together with the transaction, closing, and transition costs incurred by the large  
58 water public utility unless such transaction, closing, and transition costs are  
59 elsewhere recoverable in rates. If the small water utility and large water public  
60 utility proceed with the sale, any past-due fees due to the state from the small  
61 water utility or its customers under chapter 640 or 644 shall be resolved prior to  
62 the transfer of ownership or the liability for such past-due fees becomes the  
63 responsibility of the large water public utility. Such fees shall not be included in  
64 the large water public utility's rate base.

65 (2) The public service commission shall issue its decision establishing the  
66 ratemaking rate base of the small water utility in its order approving the  
67 acquisition.

68 **6. Upon the date of the acquisition of a small water utility by a**  
69 **large water public utility, whether or not the procedures for**  
70 **establishing ratemaking rate base provided by this section have been**  
71 **utilized, the small water utility shall, for ratemaking purposes, become**  
72 **part of an existing service area, as defined by the public service**  
73 **commission, of the acquiring large water public utility that is either**  
74 **contiguous to the small water utility, the closest geographically to the**  
75 **small water utility, or best suited due to operational or other**  
76 **factors. This consolidation shall be approved by the public service**  
77 **commission in its order approving the acquisition.**

78 **7.** Any new permit issued pursuant to chapters 640 and 644, when a small  
79 water utility is acquired by a large water public utility, shall include a plan to  
80 resolve all outstanding permit compliance issues. After the transfer of ownership,  
81 the acquiring large public water utility shall continue providing service to all  
82 customers that were served by the small water utility at the time of sale.

83 **[7.] 8.** This section is intended for the specific and unique purpose of  
84 determining the ratemaking rate base of small water utilities and shall be  
85 exclusively applied to large water public utilities in the acquisition of a small  
86 water utility. This section is not intended to apply beyond its specific purpose  
87 and shall not be construed in any manner to apply to electric corporations,  
88 natural gas corporations, or any other utility regulated by the public service  
89 commission.

393.1075. 1. This section shall be known as the "Missouri Energy  
2 Efficiency Investment Act".

3 2. As used in this section, the following terms shall mean:

4 (1) "Commission", the Missouri public service commission;

5 (2) "Demand response", measures that decrease peak demand or shift  
6 demand to off-peak periods;

7 (3) "Demand-side program", any program conducted by the utility to  
8 modify the net consumption of electricity on the retail customer's side of the  
9 electric meter, including but not limited to energy efficiency measures, load  
10 management, demand response, and interruptible or curtailable load;

11 (4) "Energy efficiency", measures that reduce the amount of electricity  
12 required to achieve a given end use;

13 (5) "Interruptible or curtailable rate", a rate under which a customer  
14 receives a reduced charge in exchange for agreeing to allow the utility to  
15 withdraw the supply of electricity under certain specified conditions;

16 (6) "Total resource cost test", a test that compares the sum of avoided  
17 utility costs and avoided probable environmental compliance costs to the sum of  
18 all incremental costs of end-use measures that are implemented due to the  
19 program, as defined by the commission in rules.

20 3. It shall be the policy of the state to value demand-side investments  
21 equal to traditional investments in supply and delivery infrastructure and allow  
22 recovery of all reasonable and prudent costs of delivering cost-effective  
23 demand-side programs. In support of this policy, the commission shall:

24 (1) Provide timely cost recovery for utilities;

25 (2) Ensure that utility financial incentives are aligned with helping  
26 customers use energy more efficiently and in a manner that sustains or enhances  
27 utility customers' incentives to use energy more efficiently; and

28 (3) Provide timely earnings opportunities associated with cost-effective  
29 measurable and verifiable efficiency savings.

30 4. The commission shall permit electric corporations to implement  
31 commission-approved demand-side programs proposed pursuant to this section  
32 with a goal of achieving all cost-effective demand-side savings. Recovery for such  
33 programs shall not be permitted unless the programs are approved by the  
34 commission, result in energy or demand savings and are beneficial to all  
35 customers in the customer class in which the programs are proposed, regardless  
36 of whether the programs are utilized by all customers. The commission shall

37 consider the total resource cost test a preferred cost-effectiveness test. Programs  
38 targeted to low-income customers or general education campaigns do not need to  
39 meet a cost-effectiveness test, so long as the commission determines that the  
40 program or campaign is in the public interest. Nothing herein shall preclude the  
41 approval of demand-side programs that do not meet the test if the costs of the  
42 program above the level determined to be cost-effective are funded by the  
43 customers participating in the program or through tax or other governmental  
44 credits or incentives specifically designed for that purpose.

45         5. To comply with this section the commission may develop cost recovery  
46 mechanisms to further encourage investments in demand-side programs  
47 including, in combination and without limitation: capitalization of investments  
48 in and expenditures for demand-side programs, rate design modifications,  
49 accelerated depreciation on demand-side investments, and allowing the utility to  
50 retain a portion of the net benefits of a demand-side program for its shareholders.  
51 In setting rates the commission shall fairly apportion the costs and benefits of  
52 demand-side programs to each customer class except as provided for in subsection  
53 6 of this section. Prior to approving a rate design modification associated with  
54 demand-side cost recovery, the commission shall conclude a docket studying the  
55 effects thereof and promulgate an appropriate rule.

56         6. The commission may reduce or exempt allocation of demand-side  
57 expenditures to low-income classes, as defined in an appropriate rate proceeding,  
58 as a subclass of residential service.

59         7. Provided that the customer has notified the electric corporation that the  
60 customer elects not to participate in demand-side measures offered by an  
61 electrical corporation, none of the costs of demand-side measures of an electric  
62 corporation offered under this section or by any other authority, and no other  
63 charges implemented in accordance with this section, shall be assigned to any  
64 account of any customer, including its affiliates and subsidiaries, meeting one or  
65 more of the following criteria:

66         (1) The customer has one or more accounts within the service territory of  
67 the electrical corporation that has a demand of five thousand kilowatts or more;

68         (2) The customer operates an interstate pipeline pumping station,  
69 regardless of size; or

70         (3) The customer has accounts within the service territory of the electrical  
71 corporation that have, in aggregate, a demand of two thousand five hundred  
72 kilowatts or more, and the customer has a comprehensive demand-side or energy

73 efficiency program and can demonstrate an achievement of savings at least equal  
74 to those expected from utility-provided programs.

75         8. Customers that have notified the electrical corporation that they do not  
76 wish to participate in demand-side programs under this section shall not  
77 subsequently be eligible to participate in demand-side programs except under  
78 guidelines established by the commission in rulemaking.

79         9. Customers who participate in demand-side programs initiated after  
80 August 1, 2009, shall be required to participate in program funding for a period  
81 of time to be established by the commission in rulemaking.

82         10. Customers electing not to participate in an electric corporation's  
83 demand-side programs under this section shall still be allowed to participate in  
84 interruptible or curtailable rate schedules or tariffs offered by the electric  
85 corporation.

86         11. The commission shall provide oversight and may adopt rules and  
87 procedures and approve corporation-specific settlements and tariff provisions,  
88 independent evaluation of demand-side programs, as necessary, to ensure that  
89 electric corporations can achieve the goals of this section. Any rule or portion of  
90 a rule, as that term is defined in section 536.010, that is created under the  
91 authority delegated in this section shall become effective only if it complies with  
92 and is subject to all of the provisions of chapter 536 and, if applicable, section  
93 536.028. This section and chapter 536 are nonseverable and if any of the powers  
94 vested with the general assembly pursuant to chapter 536 to review, to delay the  
95 effective date, or to disapprove and annul a rule are subsequently held  
96 unconstitutional, then the grant of rulemaking authority and any rule proposed  
97 or adopted after August 28, 2009, shall be invalid and void.

98         12. Each electric corporation shall submit an annual report to the  
99 commission describing the demand-side programs implemented by the utility in  
100 the previous year. The report shall document program expenditures, including  
101 incentive payments, peak demand and energy savings impacts and the techniques  
102 used to estimate those impacts, avoided costs and the techniques used to estimate  
103 those costs, the estimated cost-effectiveness of the demand-side programs, and the  
104 net economic benefits of the demand-side programs.

105         13. Charges attributable to demand-side programs under this section shall  
106 be clearly shown as a separate line item on bills to the electrical corporation's  
107 customers.

108         14. (1) Any customer of an electrical corporation who has received a state

109 tax credit under sections 135.350 to 135.362 or under sections 253.545 to 253.561  
110 shall not be eligible for participation in any demand-side program offered by an  
111 electrical corporation under this section if such program offers a monetary  
112 incentive to the customer, **however, this exclusion from eligibility shall not**  
113 **apply to low-income programs and participants in such programs.**

114 (2) As a condition of participation in any demand-side program offered by  
115 an electrical corporation under this section when such program offers a monetary  
116 incentive to the customer, the commission shall develop rules that require  
117 documentation to be provided by the customer to the electrical corporation to  
118 show that the customer has not received a tax credit listed in subdivision (1) of  
119 this subsection.

120 (3) The penalty for a customer who provides false documentation under  
121 subdivision (2) of this subsection shall be a class A misdemeanor.

122 15. The commission shall develop rules that provide for disclosure of  
123 participants in all demand-side programs offered by electrical corporations under  
124 this section when such programs provide monetary incentives to the  
125 customer. The disclosure required by this subsection may include, but not be  
126 limited to, the following: the name of the participant, or the names of the  
127 principles if for a company, the property address, and the amount of the monetary  
128 incentive received.

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